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8 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
9 SOUTHERN DIVISION

10 ENTROPIC COMMUNICATIONS, LLC, §
11 Plaintiff, §

12 v. §

13 DISH NETWORK CORPORATION, §
et al., §
14 Defendants. §

15 _____ §
16 ENTROPIC COMMUNICATIONS, LLC, §
Plaintiff, §

17 v. §

18 COX COMMUNICATIONS, INC., et al., §
19 Defendants. §
20

Case No. 2:23-cv-01043-JWH-KES
LEAD CASE
Case No. 2:23-cv-01049-JWH-KES
LEAD CASE

Hon. John W. Holcomb
Special Master David M. Keyzer

SPECIAL MASTER ORDER
No. SM-16

1 Pursuant to the Court’s July 5, 2023 Order Appointing David Keyzer, Esq. as
2 Special Master for Discovery Purposes (Civil Action No. 2:23-cv-1043, Dkt. 74; Civil
3 Action No. 2:23-cv-1049, Dkt. 62), and further pursuant to the Court’s grant of
4 consolidations (Civil Action No. 2:23-cv-1043, Dkt. 129, Oct. 13, 2023 Order; Civil
5 Action No. 2:23-cv-1049, Dkt. 95, Oct. 16, 2023 Order) and the discovery dispute
6 resolution procedure agreed upon by the parties and adopted by the Special Master (Civil
7 Action No. 2:23-cv-1043, Dkt. 85-1, Aug. 4, 2023 Special Master Order No. SM-2), the
8 Special Master held a discovery hearing on November 3, 2023, and ruled on discovery
9 motions, including granting Entropic’s motion to compel production of documents by
10 Comcast Corporation, Comcast Cable Communications, LLC, and Comcast Cable
11 Communications Management, LLC (referred to herein as the “Comcast Defendants” or
12 simply as “Comcast). (Civil Action No. 2:23-cv-1043, Dkt. 174-1, Nov. 14, 2023 Special
13 Master Order No. SM-5) (“SM-5”).

14 The Court subsequently entered an Order on November 20, 2023 (Civil Action No.
15 2:23-cv-1043, Dkt. 175), ruling on a motion to dismiss filed by Comcast.

16 Comcast then presented the Special Master with a motion for reconsideration,
17 requesting the Special Master vacate SM-5 in light of the Court’s November 20, 2023
18 Order, and the Special Master heard arguments on December 1, 2023. (*See* Civil Action
19 No. 2:23-cv-1043, Dkt. 185-1, Dec. 1, 2023 Special Master Order No. SM-6 and Special
20

1 Master Minutes) (“SM-6”).) The Special Master stayed SM-5 to allow for a rehearing on
2 Comcast’s motion for reconsideration after Entropic filed its amended pleadings. (*Id.*)

3 Entropic filed its Second Amended Complaints (“SACs”) on December 8, 2023.
4 Pursuant to Special Master Order No. SM-6, the parties met and conferred regarding the
5 sufficiency of the amended complaint and submitted proposed schedules for additional
6 letter briefing. The Special Master ordered additional briefs, which the parties submitted
7 on December 28, 2023, and January 4, 2024, and the Special Master held a hearing on
8 January 12, 2024 (*See* Civil Action No. 2:23-cv-1043, Dkt. 153-1, Dec. 22, 2023 Special
9 Master Order No. SM-9) (“SM-9”); *id.*, Dkt. 199-1, Special Master Minutes.)

10 The Special Master entered Special Master Order No. SM-11 (“SM-11”) (*id.*, Dkt.
11 199-3) on January 24, 2024, lifting the stay of SM-5 and denying the Comcast
12 Defendants’ motion for reconsideration of SM-5. The Special Master further ordered that
13 “the Comcast Defendants shall produce the discovery responses ordered by SM-5 no later
14 than February 22, 2024.” (SM-11 at 10).

15 On February 6, 2024, the Comcast Defendants filed with the Court a written
16 objection to SM-11 (Civil Action No. 2:23-cv-1043, Dkts. 313, 324) pursuant to the
17 Court’s appointment Order and Federal Rule of Civil Procedure 53(f) (Civil Action No.
18 2:23-cv-1043, Dkt. 74 at 4, ¶ 8).

19 On February 29, 2024, Entropic notified the Special Master by e-mail that the
20 Comcast Defendants have produced no documents pursuant to SM-11, and Entropic

1 requested a hearing with the Special Master regarding non-compliance with SM-11. The
2 Comcast Defendants responded by e-mail that the parties have a dispute regarding
3 procedure and that Entropic is attempting to circumvent the Court's review of SM-11.

4 On one hand, at least two district court decisions have found clarification
5 appropriate as to when a special master order becomes effective. *In re Valeant Pharm.*
6 *Int'l Inc. Sec. Litig.*, No. 15-7658 (MAS) (LHG), 2021 WL 4810850 (D.N.J. Oct. 15,
7 2021); *In re FirstEnergy Corp. Sec. Litig.*, No. 2:20-cv-03785-ALM-KAJ, 2023 WL
8 9271175 (D. Ohio Nov. 28, 2023).

9 On the other hand, the Court's appointment order in the above-captioned cases
10 states "[t]he Special Master shall have discretion to set forth the procedure for submission
11 and *resolution* of disputes." (Civil Action No. 2:23-cv-1043, Dkt. 74 at 3 ¶ 3 (emphasis
12 added).) That is, the appointment order contemplates that a special master order is not
13 merely a recommendation but rather is a "resolution of disputes." (*Id.*) Likewise,
14 *Valeant Pharmaceuticals* noted that it "doubts the drafters of the Federal Rules intended
15 the Special Master's discovery orders to serve as mere dress rehearsal for the Court to
16 consider months later." 2021 WL 4810850, at *2.

17 The Special Master therefore hereby ORDERS the Comcast Defendants to SHOW
18 CAUSE why the Special Master should not find that the Comcast Defendants are in non-
19 compliance with Special Master Order No. SM-11. On this issue, the parties may submit
20 letter briefing to the Special Master as follows:

1 The Comcast Defendants may file an opening letter brief (four pages maximum,
2 with attachments permitted if desired) no later than **March 13, 2024, at 3:00 P.M.**
3 **Pacific Time.**

4 Plaintiff may file a responsive letter brief (four pages maximum, with attachments
5 permitted if desired) no later than **March 20, 2024, at 1:00 P.M. Pacific Time.**

6 The Comcast Defendants may file a reply letter brief (two pages maximum, with
7 attachments permitted if desired) no later than **March 26, 2024, at 11:00 A.M. Pacific**
8 **Time.**

9 The Special Master also hereby **SETS** a hearing on this issue for **March 27, 2024,**
10 **at 10:00 A.M. Pacific Time,** by videoconference.

11 Counsel presenting oral arguments shall appear by video. Other counsel and other
12 attendees (such as client representatives) that do not present oral arguments may attend
13 either with or without video. Attendees shall mute their microphones when they are not
14 presenting oral arguments or are not otherwise actively participating at a particular time.

15 The parties shall confer and select a Reporter, and the cost of reporting and of
16 ordering transcripts shall be apportioned equally between Plaintiff(s) (one half) and
17 Defendant(s) (one half). The parties shall provide the Reporter's contact information to
18 the Special Master **no later than 5:00 P.M. Pacific Time the day before the hearing.**

19 The parties shall provide the Special Master and the Reporter with a list of
20 expected participants **no later than 5:00 P.M. Pacific Time the day before the hearing.**

1 This list shall be submitted by e-mail and shall indicate each name together with e-mail
2 address and status as counsel, client representative, or other relevant affiliation.

3 Each party shall provide all other parties, the Reporter, and the Special Master with
4 an electronic copy of any demonstrative presentation slides that the party intends to use
5 during the hearing **no later than 5:00 P.M. Pacific Time the day before the hearing.**

6 Such demonstrative presentation slides that are not designated as confidential shall also
7 be filed in PDF form on the Court's docket as an attachment to a Notice (slides
8 designated as confidential shall be provided only by e-mail to all other parties, the
9 Reporter, and the Special Master). The parties should not attempt any video screen
10 sharing or other presentation of demonstratives during the hearing but rather should refer
11 to the electronic copies that have been distributed by the parties prior to the hearing.

12 Use of a headset, earbuds, or a combination of a microphone and headphones
13 (rather than using any external speakers) is strongly encouraged so as to minimize
14 feedback, room echoes, and other audio interruptions that might otherwise be a
15 significant impediment to the Special Master in conducting the hearing, to opposing
16 counsel in responding to arguments, and to the Reporter in producing a clear record.

17 Zoom information for this hearing is as follows:

18 Zoom Webinar ID: 864 6018 6225

19 Password: 22301043
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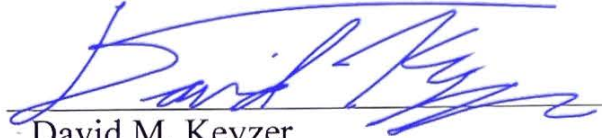
1 If after receiving the parties' letter briefs the Special Master determines that a
2 hearing is unnecessary, the Special Master will notify the relevant parties.

3 IT IS SO ORDERED.

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6 Dated:

March 6, 2024

By:



David M. Keyzer
Special Master